

### **REMARKS**

Claims 1-29 are currently pending in the application. Of originally pending claims 1-28, clarifying amendments have been made to claims 6, 8 and 27 and the remaining claims have not been amended. New independent claim 29 has been added to clarify the scope of protection being sought. Only claims 1, 25, 27, 28 and 29 are in independent form.

### ***Information Disclosure Statement***

The Examiner has indicated that the listing of references in the specification is not a proper Information Disclosure Statement. In this regard, the Examiner appears to be suggesting that in the present case all of the references identified in the specification have not been identified in a properly submitted Information Disclosure Statement. In fact, upon a review of the prosecution history available through PAIR system for the present application, it appears that what has happened in the present case is that the Examiner has failed to consider all of the Information Disclosure Statements that have been submitted by the Applicant. The Applicant has submitted three Information Disclosure Statements, and of these three, only one is identified on the "Office Action Summary" provided by the Examiner. In particular, as indicated in the PAIR record for the present application, the three submitted Information Disclosure Statements are as follows:

1) Information Disclosure Statement filed March 24, 2004, by deposit with the U.S. Postal Service, and date stamped as received by the USPTO on March 26, 2005. (This Information Disclosure Statement lists, among other things, the patents identified in the specification, and appears to have been overlooked by the Examiner.)

2) Supplemental Information Disclosure Statement filed May 9, 2005, by deposit with the U.S. Postal Service, and date stamped as received by the USPTO on May 11, 2005. (This Information Disclosure Statement appears to be the only one considered by the Examiner.)

3) Second Supplemental Information Disclosure Statement filed Sept. 21, 2005, by deposit with the U.S. Postal Service, and date stamped as received by the USPTO on Sept. 23, 2005. (This Information Disclosure Statement was date stamped as received by the USPTO on the same date that the present Office Action was mailed – Sept. 23, 2005, and thus, although timely submitted, was not considered by the Examiner.)

Copies of items 1) and 3), with copies of the return receipt postcards showing receipt of the Information Disclosure Statements, are enclosed herewith for the Examiner's reference.

Applicant respectfully submits that the Applicant is entitled to have the timely filed but as-yet unconsidered Information Disclosure Statement filed March 24, 2004, and the Second Supplemental Information Disclosure Statement filed Sept. 21, 2005, considered by the Examiner and the references cited therein made of record.

Furthermore, in the event that after considering the present reply the Examiner is not able to issue a Notice of Allowance, Applicant submits that the next Office Action should be a Non-Final Office Action.

### ***Claim Rejections - 35 USC 102***

Claims 1-3, 12, 24-27 have been rejected under 35 U.S.C. 102(b) as being anticipated by Buckbee (2,322,415). It is submitted that this rejection is improper and therefore should be withdrawn, for the following reasons.

With respect to independent claim 1, it is submitted that Buckbee does not anticipate the subject matter of such claim as Buckbee does not disclose all the limitations of independent claim 1. In particular, Buckbee does not disclose a wheel which is mounted to rotate about a first wheel axis tilted at an angle relative to a horizontal reference. Buckbee discloses a sand dewatering wheel which, with reference to Figures 1 and 2, includes a scoop wheel which rotates

about a horizontal axis 12. The axis 12 shown in Buckbee is not tilted at an angle relative to a horizontal reference as required by present claim 1.

It is noted that the Examiner has indicated that original dependent claim 4 is directed to allowable subject matter. Such claim introduces the limitation that the tilt of the first wheel axis relative to the horizontal reference is greater than zero degrees and equal to or less than 50 degrees. It is respectfully submitted that a person skilled in the art upon reading the present specification and claims would understand that the term "tilted" as used in independent claim 1 means that the first wheel axis is tilted at an angle that is greater than zero degrees relative to the horizontal reference. Accordingly, it is respectfully submitted that dependent claim 1 is directed to patentable subject matter in the same manner that dependent claim 4 is.

Similarly, independent claim 25 also includes limitations not disclosed in Buckbee. In particular, Buckbee does not show the limitation of a tank having a tilt sidewall positioned at an angle relative to the vertical, and a wheel mounted within the tank at a tilt angle relative to the vertical and which corresponds to the angle of the tilt sidewall. Again, it is submitted that in the context of the claim the use of the term "tilt" inherently requires an angle of greater than zero degrees. In Buckbee, the scoop wheel is in fact parallel to a vertical reference, rather than arranged at a tilt angle relative to the vertical.

With respect to independent method claim 27, such claim is also not anticipated by Buckbee as it includes limitations not shown in Buckbee. In particular, independent method claim 27 includes a step of providing a scoop wheel mounted to rotate about a scoop wheel axis that is tilted relative to a horizontal reference, the scoop wheel having a downwardly oriented first side and being located in a tank having an upwardly extending wall adjacent the first side of the scoop wheel, the wall having an upper limit about which the scoop extend and rotation. Among other things, Buckbee fails to disclose providing a scoop wheel mounted to rotate about a scoop wheel axis that is tilted relative to a horizontal reference.

Accordingly, applicant submits that the subject matter of independent claims 1, 25 and 27 is novel and patentable over Buckbee, as is the subject matter of the claims which depend from independent claims 1, 25 and 27.

Claims 1, 6-9, 13-16, 18, and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanii (5,490,928). It is respectfully submitted that such rejection is improper and should be withdrawn for the following reasons.

Referring to claim 1, Tanii does not disclose all of the limitations of present independent claim 1. In particular, Tanii does not disclose a first wheel mounted within a tank to rotate about a first wheel axis tilted at an angle relative to a horizontal reference. Figures 3 and 4 of Tanii disclose a scoop wheel which rotates about a axis which is parallel to a horizontal reference, rather than tilted at an angle to a horizontal reference.

Similarly, with respect to independent claim 25, Tanii does not disclose all of the limitations of such claim as Tanii fails to show a tank having a tilt sidewall position at an angle relative to the vertical, and a wheel mounted within the tank at a tilt angle relative to the vertical and which corresponds to the angle of the tilt sidewall. Rather, Tanii discloses a scoop wheel in which the wheel is mounted parallel to the vertical.

With respect to independent method claim 27, Tanii does not anticipate the subject matter of such claim as Tanii fails to disclose the limitation of providing the scoop wheel mounted to rotate about a scoop wheel axis that is tilted relative to a horizontal reference, the scoop wheel having a downwardly oriented first side and being located in a tank having an upwardly extending wall adjacent the first side of the scoop wheel. Rather, in Tanii, the provided scoop wheel is mounted to rotate about a scoop wheel axis that is parallel to a horizontal reference.

Accordingly, it is submitted that the subject matter of independent claims 1, 25 and 27 and the claims which depend from such claims is directed to novel subject matter that is patentable over Tanii.

***Claim Rejections - 35 USC 103***

The Examiner has rejected claim 11 under 35 U.S.C. 103(a) as being unpatentable over Tanii and claim 23 under 35 U.S.C. 103(a) as being unpatentable over Tanii in view of Nordhus (4,915,826). It is respectfully submitted that such rejections are improper and should be withdrawn for the following reasons.

Claims 11 and 23 each depend from independent claim 1, which is directed to patentable subject matter for the reasons stated above. Accordingly, dependent claims 11 and 23 are also directed to patentable subject matter.

***Other Matters***

New independent claim 29 has been added to further clarify the scope of protection being sought. It is respectfully submitted that such claim is supported by the application and drawings as originally filed, and furthermore is directed to subject matter that is patentable over the cited references.

Applicant notes that the Examiner has indicated that claims 4-5, 10, 17, 19-23 and 28 are objected to as being dependent upon or rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base and any intervening claims.

***Conclusion***

It is respectfully submitted that the application is currently in condition for allowance which earnestly solicited.


If the Examiner has any further questions or concerns, the Examiner is invited to contact the Applicant's undersigned attorney/agent.

Serial No.: 10/705,551  
Amendment and Response  
Reply to Office Action of September 23, 2005

Attorney Docket No.: 035683.00023

A check in the amount of \$125.00 is enclosed for payment of additional claim fees for newly added independent claim 29. If any other fees are occasioned by this Amendment, the Commissioner is hereby authorized to charge them to, or to credit, Deposit Account 08-2442 of the undersigned.

Respectfully submitted,  
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Date: December 23, 2005

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Encs. *-Information Disclosure Statement filed March 24, 2004  
with Return Receipt Postcard date stamped March 26, 2005*

*-Second Supplemental Information Disclosure Statement filed September 21, 2005 with  
Return Receipt Postcard date stamped September 23, 2005*